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IN THE

Supreme Court of the United States,

OCTOBER TERM, 1926

No. 103

JOHN JAMES JACKSON, WILLIAM A. WILSON, CHRISTOPHER R. SHOTTON *et al.*,
Petitioners,

vs.

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD.,
Claimant.

BRIEF FOR PETITIONERS.

ON WRIT OF CERTIORARI OF UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FOR CERTIORARI FILED AUGUST 2nd, 1926,
CERTIORARI GRANTED OCTOBER 25, 1926.

SILAS B. AXTELL,
Proctor for Petitioners.

JOHN W. DAVIS,
Of Counsel.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1926.

No. 547.

JOHN JAMES JACKSON, WILLIAM A. WILSON, CHRISTOPHER R. SHOTTON *et al.*,

Petitioners,

vs.

STEAMSHIP "ARCHIMEDES", LAMPORT & HOLT LINE, LTD.,

Claimant.

BRIEF FOR PETITIONERS.

Petitioners brought a libel herein on July 27, 1922, to recover wages and waiting time under Sections 4530 and 4529 of the Revised Statutes. The District Court for the Southern District of New York dismissed the libel with costs on July 25, 1925, and on May 3, 1926, the United States Circuit Court of Appeals for the Second Circuit affirmed, upon the opinion in the Court below.

The opinion of the District Court appears in 10 Fed. (2d) 234 and in the record of this case, page 62.

Jurisdiction.

The jurisdiction of this Court was invoked by a petition for a writ of certiorari filed August 2, 1926, under the provisions of Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, Ch. 229

(43 Stat. L. 938). The petition was granted by this Court on October 25, 1926. The basis of Federal Jurisdiction is that the statements contained in the libel involved the construction of a Federal Statute and brought the question within the Maritime and Admiralty jurisdiction of the United States and its courts.

Statement of Facts.

The libelants are five able seamen who shipped at Manchester, England, on May 19, 1922, on the *Archimedes*, a British steamship, for a round voyage to New York and return. At the time they signed shipping articles, each of them received an advance varying from £2 to £4 on account of wages. The advance was made by the issuance of a note discountable at Manchester. The vessel arrived in New York on June 1, 1922. On June 3, 1922, each of them received from the Master of the ship about $5 or $6. On June 8, 1922, they made a formal demand upon the Master for one-half the wages earned and unpaid at that date. This demand having been refused, they left the ship and filed this libel, June 9, 1922.

The libel set forth the essential facts and demanded in behalf of each individual a sum equal to full wages earned and due at the time of the demand, advances in England disregarded, together with waiting time under R. S. §4529. The answer set forth in substance that the advances in England were valid, and that when they are considered, the payments made to each seaman on June 3, became a payment of wages in excess of one-half the balance of wages then earned and remaining unpaid. There was a further allegation that the demand on June 8 was not made in good faith, but only to provoke an occasion for deserting the ship.

The District Judge did not pass upon the question of good faith but dismissed the libel upon the ground that the advances in England were valid and that, therefore, the seamen's demand on June 8 was not justified. In so concluding, he held that the amendment to the Seamen's Act of March 4, 1915 (38 Stat. 1168), embodied in Sec. 34 of the Jones Act of June 5, 1920 (41 Stat. 1007), did not reach advances made in foreign ports by foreign ships so as to render them invalid when demand for half wages is made in this country under Revised Statutes, Section 4530. It is not disputed that British law and custom sanctioned the advances. It is conceded that under the Seamen's Act of 1915, as it stood prior to 1920, these advances must be considered in computing the wages due when demand is made in this country, and that the Supreme Court so decided in *The Talus,* 248, U. S. 185. The Circuit Court of Appeals for the Second Circuit affirmed upon the opinion of the District Court. The question here presented is whether the amendment of 1920 has changed the law.

Argument.

POINT I.

The Jones Act amended the Seamen's Act so as to render invalid advances made to seamen under the circumstances of this case.

The statute here under consideration is set forth below, the words added in 1920 appearing in italics:

> "(a) It shall be, and is hereby made unlawful in any case to pay any seaman wages in advance of the time when he has actually earned the same,

or to pay such advance wages, or to make any order, or note, or other evidence of indebtedness therefor to any other person, or to pay any person, for the shipment of seamen when payment is deducted or to be deducted from a seaman's wages. Any person violating any of the foregoing provisions of this section shall be guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than $25 nor more than $100, and may also be imprisoned for a period of not exceeding six months at the discretion of the Court. The payment of such advance wages or allotment, *whether made within or without the United States or territory subject to the jurisdiction thereof,* shall in no case except as herein provided absolve the vessel or the master or the owner thereof from the full payment of wages after the same shall have been actually earned, and shall be no defense to a libel suit or action for the recovery of such wages. If any person shall demand or receive either directly or indirectly, from any seaman, or from any person on his behalf, any remuneration whatever for providing him with employment, he shall for every such offense be deemed guilty of a misdemeanor and shall be imprisoned not more than six months or fined not more than $500."

* * * * * * *

"(e) This section shall apply as well to foreign vessels while in the waters of the United States, as to vessels of the United States, and any master, owner, consignee or agent of any foreign vessel who has violated its provisions shall be liable to the same penalty that the master, owner, or agent of a vessel of the United States would be for similar violation.

> The master, owner, consignee or agent of any vessel of the United States, or of any foreign vessel seeking clearance from a port of the United States, shall present his shipping articles at the office of clearance, and no clearance shall be granted any such vessel unless the provisions of this section have been complied with" (41 Stat. 1007).

The Act of March 4, 1915, 38 Stat. 1168, was a comprehensive statute designed to promote safety at sea, to improve the conditions of seamen, and more effectively to eliminate the ancient practice of hiring seamen through advances. The viciousness of this practice has been noted in no uncertain terms by the courts. *The Windrush*, 250 Fed. 180, 182 (2d C. C. A.); *Patterson* v. *Bark Eudora*, 190 U. S. 169, 175. Section 11 of that statute was thought to have been so worded as to make invalid advances made abroad by foreign ships, when demand was made in this country for half wages as in this case. However, in *The Talus* (*Sandberg* v. *McDonald*), 248 U. S. 185, this Court decided by a five to four division that the statute did not cover such advances, and invited amendment to the statute if a further extension of its provision were desired. That case arose on facts like the present, *i. e.*, advances made in a foreign port by a foreign ship. On the day *The Talus* was decided, *The Rhine*, 248 U. S. 205, was decided by the same five to four division.

In *The Rhine* the question was whether advances made in Buenos Aires by the American Master of an American ship were invalid under the provisions of the Act of 1915. The majority held that the Act of 1915 did not cover such advances. These decisions were rendered in

December, 1918. Promptly thereafter and in response to the express invitation of the majority opinion in *The Talus,* the Senate Committee on Commerce, to which the Merchant Marine (Jones) Act was referred, inserted the amendment which added the italicized words.

The District Court concluded that the addition of the italicized words was made only to meet the decision in *The Rhine, i. e.,* to make the Act apply to advances made by American ships in foreign ports, but that the amendment did not reach the situation presented by *The Talus,* and hence held the advances valid. The chief basis for this conclusion was that there had been no alteration in the language of paragraph (e) of Section 11 of the Act of 1915; that this section had been relied upon in the majority opinion in *The Talus* as evidencing an intention on the part of Congress not to affect advances made in foreign ports by foreign ships, and that in the absence of any alteration of this language the amendment could not be said to have changed the result of *The Talus.*

In the opinion in *The Talus,* Mr. Justice Day said at page 195:

> "Did Congress intend to make invalid the contracts of foreign seamen so far as advance payment of wages is concerned, when the contract and payment were made in a foreign country where the law sanctioned such contract and payment? Conceding for the present that Congress might have legislated to annul such contracts as a condition upon which foreign vessels might enter the ports of the United States, it is to be noted, that such sweeping and important requirement is not found specifically made in the statute. Had Congress intended to make void such contracts and

> payments *a few words would have stated that intention,* not leaving such an important regulation to be gathered from implication. There is nothing to indicate an intention, so far as the language of the statute is concerned, to control such matters otherwise than in the ports of the United States." (Italics ours.)

It is the contention of the appellants that Congress met the invitation of this Court to add a few words to the Seamen's Act by the addition of the words "whether made within or without the United States or territory subject to the jurisdiction thereof", in the section making payments of wages in advance unlawful. No longer need that intention be gathered from implication. It has been plainly expressed.

Section 34 of the Act of 1920 containing this amendment was before the Senate on May 14, 1920, at which time Senator Jones, Chairman of the Committee on Commerce, and in charge of the Bill stated the object of the amendment. (§34 of the Bill containing the amendment having been read, the following discussion ensued.)

> "Mr. King: I should like to ask the Senator having this Bill in charge what is the necessity now of re-enacting legislation dealing with this subject?
>
> Mr. Jones, of Washington: I will call the Senator's attention to the only change made in the law by this provision. He will note on page 51 in lines 5 and 6 the words:
>
> The payment of such advance wages or allotment——
>
> here is the change in existing law:
>
> whether made within or without the United

States or territory subject to the jurisdiction thereof.

The Supreme Court has upheld this section and has also upheld the right of Congress to deal with foreign seamen in our ports. The purpose of the provision is to prevent what is called 'crimping' in the securing of seamen. For instance, we prevent by our law advances being made to seamen and sailors in this country. That was simply to prevent the boarding houses or the crimping houses from taking advantage of seamen, as the Senator understands. *The purpose of this section is to prevent that as to sailors or ships coming from a foreign port to this country.* It is a very common custom in many other countries to require advance payments or wages when seamen ship. Under this provision that practice will be stopped. That is the sole purpose of the proposed change. (Italics ours.)

The Presiding Officer: The question is on agreeing to the amendment reported by the Committee.

The amendment was agreed to."

(59 Congressional Record, Part 7, page 7043—66th Congress, Second Session.)

The above statement by Senator Jones makes it clear that the situation involved in *The Talus* and in the present case was distinctly in the minds of the members of Congress when this amendment was proposed and agreed to. While he does not refer specifically to foreign vessels, no one can read this statement without being convinced that he was referring alike to foreign vessels and to ships of the United States.

This is further made evident by his remarks the same day when §33 of the Jones Act was before the Senate. This section made a slight amendment in Revised Statutes §4530, which had been re-enacted with a slight change in 1915 as part of the Seamen's Act. In response to an inquiry as to the purpose of this change, Senator Jones said:

> "It was one of the main contentions, the Senator from Utah will remember, in favor of the Seamen's Act that it would, instead of placing a great burden on our seamen and shippers, bring the wages of the seamen of the other countries up to a level with our own. This provision is intended to aid in carrying out that great purpose." (59 Congressional Record, Part 7, p. 7037.)

It would seem to be an extraordinary conclusion that in the Act of 1920 Congress singled out for legislative change one decision of this Court and ignored another, decided the same day, by the same division, when both of them affected adversely and in a similar manner the cause of seamen's welfare. If the language is consonant with the purpose, it would seem plain that Congress was meeting both decisions of this Court unless there were clear reasons for differentiating between them.

But instead of there being reasons for differentiating, there were strong reasons for treating both decisions alike. In the present case the result of a holding that the 1920 amendment affected *The Rhine* only and not *The Talus* produces a discrimination against American ships, which is clearly out of line with the familiar Congressional purpose of encouraging American shipping and putting it in all respects on an equal footing with

foreign shipping. *Patterson* v. *Bark Eudora,* 190 U. S. 169, 179; *The State of Maine,* 22 Fed. 734, 736; *The Windrush,* 250 Fed. 180, 183.

Judge Hand's decision affirmed by the Circuit Court means that American ships in engaging seamen in foreign ports will be at a disadvantage because unable lawfully to make advances which foreign ships in competition with them are free to make.

When *The Rhine* was before this Court the argument was made that even if advances made by foreign ships as in *The Talus* were not reached by the Act, the Act at least reached advances made by American ships in foreign ports. The Court was invited to distinguish the two situations. To this Mr. Justice Day replied (248 U. S. at 213):

> "But we are unable to discover that in passing this statute Congress intended to place American ships at the great disadvantage of this inability to obtain seamen when compared with the vessels of other nations which are manned by complying with local usage."

Judge Hand's decision discovers that in 1920, with this plain statement before it, Congress did intend to place American shipping at a great disadvantage when it added the italicized words to paragraph (a). Whereas in 1918 this Court was moved to decide both cases in the same way, Judge Hand concludes that in 1920 Congress proposed to distinguish them, and in a manner that seriously prejudices American shipping.

He reaches this conclusion by the negative reasoning that this intention is discovered in the failure to change the language of paragraph (e). It is submitted that such

intention is entirely out of harmony with the traditional Congressional attitude toward American shipping, particularly prominent in 1920 when every effort was being made to preserve the war-created Merchant Marine as a permanent body of American shipping, and is not lightly to be found through such negative reasoning.

Paragraph (e) retained a significance in its unaltered form which might have been lost had it been changed. Under the Act of 1915 this paragraph obviously applied to the penal provisions in paragraph (a), making any person guilty of paying an advance on account of wages to a seaman guilty of a misdemeanor, punishable by a fine of from $25 to $100 and imprisonment up to six months. The same paragraph made it a misdemeanor for a person to demand or receive remuneration from a seaman for providing him with employment and this was punishable by a fine up to $500 or imprisonment up to six months.

It is clear that these provisions could not reach acts done abroad, but that they could reach acts done on foreign vessels while in waters of the United States. *Schooner Exchange* v. *McFadden,* 7 Cranch 116, 136, 146; *Wildenhus'* case, 120 U. S. 1, 11; *Patterson* v. *Bark Eudora,* 190 U. S. 169, 173, 178.

It has been observed in *The Windrush,* 250 Fed. 180, 183, that the remedial and penal portions of paragraph (a) of the Act of 1915 cannot be separated and that if advances abroad are invalid, a misdemeanor has been committed. It is to be observed that this statement was made in a case involving advances made by an American ship in a foreign port. It may be that under such circumstances an American master commits a misdemeanor and that, therefore, it may be proper to say that the

remedial and penal portions of this paragraph are co-extensive. If that were the case involved in this appeal, the argument just advanced as to the significance of paragraph (e) might not be sound. However, this appeal involves the question of the validity of advances made by foreign ships abroad. Under these circumstances it may very well be true that the master commits no misdemeanor and that no act of Congress could describe his conduct as such. It does not follow, however, that when he seeks entrance for his ship in an American port that he may not be obliged as a condition to such entry to disregard his advances in obedience to an American statute which describes such advances as unlawful wherever made. In short, in the situation presented by this case the remedial and penal provisions may not be co-extensive and the independent significance of paragraph (e) is a reality.

In *The Imberhorme,* 240 Fed. 830 (S. D. Ala. 1917), a case involving the same problem as *The Talus* and the present case, the distinction between the remedial and penal provisions of this section was pointed out by Judge Ervin at page 832 as follows:

> "In other words that even though the penalties declared by the Act cannot be applied to or enforced against the vessel, still when we come to figure the one-half of the seamen's wages that have been earned, we are directed by the terms of the Act to exclude any advances which may have been made by the ship to the seamen, whether made in a foreign jurisdiction or not and we must follow this rule in calculating the wages of the seamen when a libel is filed in the Admiralty Courts of this country."

It is respectfully submitted that the problem may not be dismissed by any general statement that the remedial and penal provisions of the statute are not to be separated.

The position of the appellants is that whereas the master of the ship might not be guilty of a misdemeanor because of advances made by him in England, nevertheless when his ship enters an American port and he becomes subject to American law in respect of payment of wages to his seamen, a provision making advances unlawful wherever made will be effective to prevent him from considering those advances in computing wages due in ports of the United States. To this end the italicized words making advancese unlawful "whether made within or without the United States" would be effective to make the advances here in question invalid when half wages are demanded in this country.

The provisions of paragraph (e) were before and remain effective to render the Master liable in American courts for fine or imprisonment if he makes such advances while within the jurisdiction of the United States. It was important to the effectiveness of the Act that paragraph (e) remain unchanged in order that the penal provisions be clearly understood by foreign shipping. In leaving them unchanged, there is no suggestion of a diminished effect to be given the italicized words in paragraph (a) and it is improper to ascribe such diminished effect to them.

The extension of the Jones Act to the case of advances made abroad on foreign ships does not require that the courts must enforce a Penal Provision that may not be jurisdictional against subjects of foreign states. It is a fixed rule that Penal Provisions in a statute are to be strictly construed. Penal Provisions can have no greater

import or application than their express words give to them.

The express words of section (e) extend the Penal Provisions of this statute only to American or foreign ships in American waters.

The Penal words of section (a), it is important to notice, are contained in the second and fourth sentences of that paragraph. This section consists of four sentences; and the words of the first sentence, as well as the words of the second and fourth sentences, which contain Penal language, do not expressly apply to advances made to foreign ships in foreign waters.

The third sentence of section (a), contains no Penal Provision. This is the sentence which contains the amendment of 1920, upon which appellant relies in extending the civil remedies of a libel suit and an action for wages, to cases in which advances have been made in foreign ports on foreign ships. This sentence stands alone. Its force as a remedial statute may not be limited or curtailed by any Penal language in other parts of the act.

The third sentence of section (a) because of its highly remedial character should be liberally construed to cover every case which the proponents of the act intended it to cover, including the present case. *Remarks of Mr. Jones, extract from Senate Debates, supra.*

It should be liberally construed to cover every case that may fairly be held to come within the meaning and import of the words used.

Construing section (a) of the Jones Act to extend civil remedies in the ports of this country in the case of advances made in foreign ports on foreign ships does no violence to the terms of the Jones Act, and carries out its spirit and purpose.

POINT II.

No constitutional or jurisdictional difficulty arises from making the amendment of 1920 apply to advances made abroad by foreign ships.

The suggestion has been made by learned counsel for the British Embassy that to read the Act of 1920 so as to cover advances made abroad by foreign ships renders the statute beyond the legislative power of Congress and indeed beyond the jurisdiction of the United States. If any doubt may have been entertained on this point, it has, we think, been put at rest by the decision of this Court in *Strathearn S. S. Co.* v. *Dillon*, 252 U. S. 348. There the question was whether under Section 4 of the Seamen's Act (38 Stat. 1165) a contract for wages made abroad between a British seaman and a British ship could be so far nullified by an act of Congress as to permit the seaman when in a port of the United States to demand one-half earned and unpaid wages under Revised Statutes, Section 4530, although under his contract it was clear that he was not entitled to be paid at that time. The same learned counsel appeared by leave of the Court in that case and made substantially the same argument there as they make now. The Court decided that in legislating in respect of seamen on ships in ports of the United States, Congress was supreme and could impose requirements which had the effect of altering or annulling contracts made abroad which were valid when made. At page 355, Mr. Justice Day said:

> "We come then to consider the contention that this construction renders the statute unconstitutional as being destructive of contract rights.

> But we think this contention must be decided adversely to the petitioner upon the authority of previous cases in this Court. The matter was fully considered in *Patterson* v. *Bark Eudora,* 190 U. S. 169, in which the previous decisions of this Court were reviewed, and the conclusion reached that the jurisdiction of this Government over foreign merchant vessels in our ports was such as to give authority to Congress to make provisions of the character now under consideration; that it was for this Government to determine upon what terms and conditions vessels of other countries might be permitted to enter our harbors, and to impose conditions upon the shipment of sailors in our own ports, and make them applicable to foreign as well as domestic vessels. Upon the authority of that case, and others cited in the opinion therein, we have no doubt as to the authority of Congress to pass a statute of this sort, applicable to foreign vessels in our ports and controlling the employment and payment of seamen as a condition of the right of such foreign vessels to enter and use the ports of the United States."

It is clear that if Congress, when dealing with seamen in American ports, may legislate in such manner as to interfere with contract rights secured abroad, with equal power it may provide that advances made abroad are to be disregarded when computing wages due in response to demands made in this country.

That part of the opinion in *Patterson* v. *Bark Eudora* especially referred to by Mr. Justice Day reads (190 U. S. at 178):

> "Indeed the implied consent to permit them [foreign merchant ships] to enter our harbors may

> be withdrawn, and if this implied consent may be wholly withdrawn it may be extended upon such terms and conditions as the Government sees fit to impose."

This declaration was recently reaffirmed in *Cunard S. S. Co.* v. *Mellon*, 262 U. S. 100, 125.

To the same effect in his brief before the District Court, counsel for the appellee contended that if the 1920 amendment were held to cover advances made abroad by foreign ships a grave doubt would arise as to its validity and he referred to a statement in the opinion of the Circuit Court of Appeals for the 5th Circuit when *The Talus* was in that Court, 248 Fed. 670, 674. That Court said:

> "If this section of the act applies to advances made by a master, owner, or agent of the foreign ship in a foreign port, its effect would be to render such master, owner or agent guilty of a misdemeanor and subject him to prosecution and punishment if found in this country for an act done without the jurisdiction of this country, and which was an unlawful act where done. The competency of Congress to so enact is of such grave doubt that a Court would not construe the language of an act to that effect, unless forced so to do."

It is to be noted that the doubt of the power of Congress suggested by the Court here was addressed to the suggestion that the foreign master could be indicted in this country for the act which he had done abroad. We agree with Judge Hough in *The Windrush* when he said that it would be absurd to suggest that the master would be indictable, but it is one thing to doubt the power of Congress to describe an act done abroad as a

misdemeanor and to attempt to make it the subject of indictment in this country, and a very different thing to doubt the power to declare that acts done abroad must be disregarded when calculations are involved in this country over which Congress has plenary power to prescribe terms and requirements. Whatever doubt this second proposition may involve was forcibly and clearly set aside by the decision in *Strathearn S. S. Co.* v. *Dillon.*

We concur with counsel for the appellee and with counsel for the British Embassy that acts of Congress are normally to be construed as not affecting the extra-territorial acts unless the language is plainly directed to that end. These considerations prevailed when the Act of 1915 was before this Court in *The Talus* and in *The Rhine.* They prevailed, however, by the narrow margin of a five to four division. They prevailed because in the language of the majority opinion, the Court could not discover an intention on the part of Congress to reach such advances, and declined to imply such intention in the face of the usual rule. All need for implication or for resort to the usual rule has been eliminated by the plain statement embodied in the amendment of 1920 that the section is to apply to advances wherever made. In the face of this language this argument advanced by counsel for the appellee and for the British Embassy has no application.

POINT III.

The appellants are entitled to waiting time under Revised Statutes, Section 4529.

The demand for wages in this case was made under Revised Statutes, Section 4530; with that section must

be read section 4529 which, as last amended in the Seamen's Act of 1915, reads as follows (38 Stat. 1164):

> "The master or owner of any vessel making coasting voyages shall pay to every seaman his wages within two days after the termination of the agreement under which he was shipped, or at the time such seaman is discharged, whichever first happens; and in case of vessels making foreign voyages, or from a port on the Atlantic to a port on the Pacific, or vice versa, within twenty-four hours after the cargo has been discharged, or within four days after the seaman has been discharged, whichever first happens; and in all cases the seaman shall be entitled to be paid at the time of his discharge on account of wages a sum equal to one-third part of the balance due him. Every master or owner who refuses or neglects to make payment in the manner hereinbefore mentioned without sufficient cause shall pay to the seaman a sum equal to two days' pay for each and every day during which payment is delayed beyond the respective periods, which sum shall be recoverable as wages in any claim made before the Court; but this section shall not apply to masters or owners of any vessel the seamen of which are entitled to share in the profits of the cruise or voyage."

The claim for waiting time is based upon the language of the above section providing that in the case of vessels making foreign voyages payment must be made to any seaman within twenty-four hours after the cargo has been discharged or within four days after the seaman has been discharged, whichever first happens. Neglect or refusal to make payment as required without sufficient cause results in a penalty upon the master or owner in

the amount of a sum equal to two days' pay for each day during which payment is delayed. This sum is made recoverable as wages in any claim before a court. The language of this section relating to payment upon discharge is very broad and must be read so as to cover a discharge resulting from the failure of the master to comply with the demand of a seaman for half wages under Revised Statutes, Section 4530, as in this case.

Revised Statutes, Section 4530, as last amended in 1920, reads as follows:

> "Sec. 4530. Every seaman on a vessel of the United States shall be entitled to receive on demand from the master of the vessel to which he belongs one-half part of the balance of his wages earned and remaining unpaid at the time when such demand is made at every port where such vessel, after the voyage has been commenced, shall load or deliver cargo before the voyage is ended, and all stipulations in the contract to the contrary shall be void: *Provided,* such a demand shall not be made before the expiration of, nor oftener than once in, five days nor more than once in the same harbor on the same entry. Any failure on the part of the master to comply with this demand shall release the seaman from his contract and he shall be entitled to full payment of wages earned. And when the voyage is ended every such seaman shall be entitled to the remainder of the wages which shall be then due him, as provided in Section 4529 of the Revised Statutes: *Provided further,* That notwithstanding any release signed by any seaman under Section 4552 of the Revised Statutes any court having jurisdiction may upon good cause shown set aside such release and take

such action as justice shall require: *And provided further,* That this section shall apply to seamen on foreign vessels while in harbors of the United States, and the courts of the United States shall be open to such seamen for its enforcement" (41 Stat. 1006).

CONCLUSION.

It is respectfully submitted that the decree of the Circuit Court should be reversed.

Respectfully submitted,

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Proctor for Appellants.

JOHN W. DAVIS,
Of Counsel.